

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Examiner: Bunner, Bridget E.
)	
Kevin P. BAKER, et al.)	Art Unit: 1647
)	
Application Serial No. 10/015,822)	Confirmation No: 8184
)	
Filed: December 10, 2001)	Attorney's Docket No. 123851-181898 (GNE-
)	2830-P1C38)
For: PRO1759 POLYPEPTIDES)	
		Customer No. 77845

FILED VIA EFS - JULY 30, 2008

COMMUNICATION

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

In response to the Examiner's telephone call of July 30, 2008, applicants resubmit the Response to Non-Compliant Appeal Brief in its entirety. Fees were paid at the time of the original submission, June 5, 2008, therefore no fees are due.

Respectfully submitted,

Date: July 30, 2008

By: 
Christopher De Vry (Reg. No. 62,425)

GOODWIN PROCTER LLP

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LIBC/3316715.2

Acknowledgement Receipt

The USPTO has received your submission at **14:33:05** Eastern Time on **05-JUN-2008** by Deposit Account: 071700.

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eFiled Application Information

EFS ID	3409065
Application Number	10015822
Confirmation Number	8184
Title	PRO1759 POLYPEPTIDES
First Named Inventor	Kevin P. Baker
Customer Number or Correspondence Address	30313
Filed By	Ginger R. Dreger/Arlette Malhas
Attorney Docket Number	GNE.2830P1C38
Filing Date	10-DEC-2001
Receipt Date	05-JUN-2008
Application Type	Utility under 35 USC 111 (a)

Application Details

Submitted Files	Page Count	Document Description	File Size	Warnings
ResponseNonCompliantBrief.pdf	4		119808 bytes	◆ PASS
		Document Description	Page Start	Page End
		Miscellaneous Incoming Letter	1	1
		Supplemental Appeal Brief	2	4
fee-info.pdf	2	Fee Worksheet (PTO-06)	8131 bytes	◆ PASS

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If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

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If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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PTO/SB/21 (6-99)

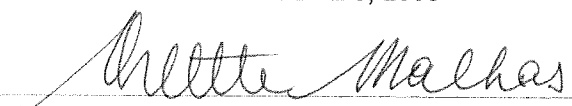
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<h1 style="text-align: center;">TRANSMITTAL FORM</h1> <p style="text-align: center;">(to be used for all correspondence after initial filing)</p>	Application Number	10/015,822
	Filing Date	December 10, 2001
	First Named Inventor	Baker et al.
	Group/Art Unit	1647
	Examiner Name	Bunner, Bridget E.
Total Number of Pages in This Submission	Attorney Docket Number	GNE-2830-P1C38

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Version With Markings Showing Changes <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request – 3 months <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 <input type="checkbox"/> Copy of Notice	<input type="checkbox"/> Copy of Assignment <input type="checkbox"/> Amendment Under 37 CFR §1.48(b) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition Routing Slip (PTO/SB/69) and Accompanying Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, by Assignee to Exclusion of Inventor Under 37 C.F.R. §3.71 With Revocation of Prior Powers <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request for Refund	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> APPEAL COMMUNICATION TO GROUP (APPEAL NOTICE, BRIEF, REPLY BRIEF) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Additional Enclosure(s) (Please Identify Below): <input type="checkbox"/>
Remarks: AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT 07-1700 FOR ANY FEES DUE IN CONNECTION WITH THIS PAPER, REFERENCING ATTORNEY'S DOCKET NO. 123851-181898 (GNE-2830-P1C38).		

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT			
Firm or Individual name	GOODWIN PROCTER LLP	CHRISTOPHER DE VRY (Reg. No. 61,425)	
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Signature			
Date	JUNE 5, 2008	Customer Number:	77845

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BY: ARLETTE MALHAS	
LIBC/3316887.1	

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)	2830-P1C38)
For: PRO1759 POLYPEPTIDES)	
		Customer No. 77845

Filed Via EFS: June 5, 2008

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

On April 12, 2007, the Examiner made a final rejection to pending Claims 28-35 and 38-40. A Response to Final Office Action was filed on August 13, 2007. A Notice of Appeal was subsequently filed on September 11, 2007. An Advisory Action was mailed on November 13, 2007. An Appeal Brief was filed on January 10, 2008.

A Notification of Non-Compliant Appeal Brief was mailed February 5, 2008, which stated that the Appeal Brief did not fit with the criteria of 37 C.F.R. §41.37(c)(1)(v)). Specifically, the notification asserted that, in Section 5, the "summary of the claimed subject matter does not map the independent claim on appeal, to the specification by page and line numbers and to the drawings, if any (claim 28)." The following amended Appeal Brief has been corrected to more clearly reference the claims and identify line numbers where appropriate in the Summary of Claimed Subject Matter (Section 5), as requested by the PTO.

To reduce expense and duplication, Appellants hereby resubmit only Section 5 of the Appeal Brief. The Board is requested to refer to the Appeal Brief submitted in its entirety dated January 10, 2008. This response to Non-Compliant Brief is timely filed, with a request for a three month extension of time and the necessary fees.

AMENDMENT TO THE BRIEF

5. SUMMARY OF CLAIMED SUBJECT MATTER

The invention claimed in the present application is related to an isolated polypeptide comprising the amino acid sequence of the polypeptide of SEQ ID NO:374 (Claims 33(a) and 34); the amino acid sequence of the polypeptide of SEQ ID NO:374, lacking its associated signal peptide (Claims 33(b) and 35); or the amino acid sequence of the polypeptide encoded by the full-length coding sequence of the cDNA deposited under ATCC accession number 203465 (Claims 33-35(c) and 38). The polypeptide of SEQ ID NO:374 is designated PRO1759, and its amino acid sequence is shown in Figure 218, while the encoding nucleic acid sequence (SEQ ID NO:373) is shown in Figure 217. PRO1759 is described as a novel protein having multiple transmembrane domains (see, for example, page 31, lines 21-25; page 250, lines 20-22). The isolation of cDNA clones encoding PRO1759 of SEQ ID NO:374 is described in Example 112. The invention is further directed to polypeptides having at least 80% (Claim 28), 85% (Claim 29), 90% (Claim 30), 95% (Claim 31), or 99% (Claim 32) amino acid sequence identity to the amino acid sequence of the polypeptide of SEQ ID NO:374; the amino acid sequence of the polypeptide of SEQ ID NO:374, lacking its associated signal peptide; or the amino acid sequence of the polypeptide encoded by the full-length coding sequence of the cDNA deposited under ATCC accession number 203465, wherein the nucleic acid encoding said polypeptide is amplified in lung or colon tumors (~~Claims 28-32~~). The invention is further directed to a chimeric polypeptide comprising one of the above polypeptides fused to a heterologous polypeptide (Claim 39), and to a chimeric polypeptide wherein the heterologous polypeptide is an epitope tag or an Fc region of an immunoglobulin (Claim 40).

The full-length PRO1759 polypeptide having the amino acid sequence of SEQ ID NO:374 is described in the specification at, for example, page 17, lines 20-25, page 344, lines 12-17, Example 64, in Figure 122 and in SEQ ID NO:374. The cDNA nucleic acid encoding PRO1759 is described in the specification in Figure 217 and in SEQ ID NO:373. Page 292, lines 14-18 of the specification provides the description for Figures 121 and 122. PRO polypeptide variants having at least about 80% amino acid sequence identity with a full length PRO polypeptide sequence or a PRO polypeptide sequence lacking the signal peptide are

described in the specification at, for example, page 302, lines 4-26. The preparation of chimeric PRO polypeptides, including those wherein the heterologous polypeptide is an epitope tag or an Fc region of an immunoglobulin, is set forth in the specification at page 358, lines 11-34. Examples 128-131 describe the expression of PRO polypeptides in various host cells, including E. coli, mammalian cells, yeast and Baculovirus-infected insect cells. Finally, Example 143, in the specification at page 494, line 20, to page 508, line 28, sets forth a Gene Amplification assay which shows that the PRO1759 gene is amplified in the genome of certain human lung or colon cancers (Table 8).

The specification discloses that antibodies to PRO polypeptides may be used, for example, in purification of PRO (page 380, lines 15-21 and Example 133), in diagnostic assays for PRO expression (page 363, line 31, to page 364, line 3, and page 380, lines 2-13), as antagonists to PRO (page 371, lines 27-30), and as elements of pharmaceutical compositions for the treatment of various disorders (page 379, lines 1-37).

CONCLUSION

For the reasons given above, Appellants submit that the Appeal Brief submitted with regards to the instant application meets the requirements of 37 C.F.R. §41.37(c)(1)(v)).

Accordingly, Appellants hereby request consideration by the Board of Patent Appeals and Interferences.

Please charge any additional fees, including fees for additional extension of time, or credit overpayment to Deposit Account No. 07-1700 (referencing Attorney's Docket

No. 123851-181898 (GNE-2830-PIC38).

Respectfully submitted,

Date: June 5, 2008

By: 

Christopher De Vry (Reg. No. 62,425)

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